

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOHN BUSALACHI,

Plaintiff,

v.

WALMART INC.  
WALMART INC. F/K/A WAL-MART STORES, INC.  
WAL-MART ASSOCIATES, INC.  
WAL-MART STORES EAST, LP  
WAL-MART REAL ESTATE BUSINESS TRUST  
WAL-MART STORES EAST, INC.  
WAL-MART REALTY COMPANY

Defendants.

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**NOTICE OF REMOVAL**

Case №.

**PLEASE TAKE NOTICE** that Defendants WALMART INC., WALMART INC. F/K/A WAL-MART STORES INC., WAL-MART ASSOCIATES, INC., WAL-MART STORES EAST, LP, WAL-MART REAL ESTATE BUSINESS TRUST, WAL-MART STORES EAST, INC., and WAL-MART REALTY COMPANY (hereinafter, “Removing Defendants”), by its attorneys, Bennett Schechter Arcuri & Will LLP, and pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, file this Notice of Removal of the action *John Busalachi v. Walmart Inc., Walmart Inc. f/k/a Wal-Mart Stores, Inc., Wal-Mart Associates, Inc., Wal-Mart Stores East, LP, Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, Inc., and Wal-Mart Realty Company*, Index №. 802158/2021 (the “Action”), from the Supreme Court of the State of New York, County of Erie, to the United States District Court for the Western District of New York.

In support thereof, Removing Defendants states:

1. On or about February 22, 2022, Plaintiff John Busalachi (hereinafter, “Plaintiff”) commenced the Action by filing a Summons and Complaint in the Supreme Court of

the State of New York, County of Erie, against the Removing Defendants. A copy of the Summons and Complaint is attached hereto and incorporated herein by reference as **Exhibit A**.

2. On August 13, 2021, the Removing Defendants appeared in the Action by serving its Answer, a copy of which is attached hereto and incorporated herein by reference as **Exhibit B**.

3. After the commencement of the action, and in accordance with N.Y. CPLR 3017(c), the Removing Defendants served a Request for Supplemental Demand for Relief on the Plaintiff, a copy of which is attached and incorporated herein by reference as **Exhibit C**. Plaintiff has not responded to this demand despite various requests for a response to same.

4. In the Plaintiff's Complaint, the Plaintiff alleges that he seeks damages for "severe and permanent injuries including, but not limited to injuries of the integumentary and musculoskeletal system and nervous system, legs, feet, skin and eyes, requiring medical care, treatment and with pain and suffering associated with said injuries, and remaining through present date, together with shock and injury to the nerves and nervous system." (Ex. A ¶ 35) Further, the Plaintiff alleges that he has been caused to incur loss of ability and/or time from activities of daily living, employment and/or to further incur medical care related expenses." (Ex. A ¶ 35) This all resulted in the Plaintiff having incurred and/or may continue to incur health care expenses and other economic damages and/or losses into the future." (Ex. A ¶ 35)

5. According to Plaintiff's Complaint, Plaintiff John Busalachi is an individual domiciled in the State of New York and, therefore, for the purposes of this Notice of Removal, is a citizen of the State of New York. *See* Ex. A.

6. Removing Defendants Walmart Inc. and Walmart Inc. f/k/a Wal-Mart Stores, Inc. is a corporation organized under the laws of the State of Delaware, with a principal

place of business in the State of Arkansas and, therefore, for the purposes of this Notice of Removal, is a citizen of the States of Delaware and Arkansas.

7. Removing Defendant Wal-Mart Associates, Inc., is a corporation organized under the laws of the State of Delaware, with a principal place of business in the State of Arkansas and, therefore, for the purposes of this Notice of Removal, is a citizen of the States of Delaware and Arkansas.

8. Removing Defendant Wal-Mart Stores East, LP is a limited partnership organized under the laws of the State of Delaware. The only partners of Wal-Mart Stores East, LP are general partner WSE Management, LLC and limited partner WSE Investment, LLC, both of which are limited liability companies organized under the laws of the State of Delaware. The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Arkansas. The principal place of business for all of the foregoing entities (Wal-Mart Stores East, LP; WSE Management, LLC; WSE Investment, LLC; Wal-Mart Stores East, LLC; and Wal-Mart Stores, Inc.) is in the State of Arkansas. Accordingly, for the purposes of diversity jurisdiction, Defendant Wal-Mart Stores East, LP is a citizen of the States of Delaware and Arkansas.

9. Removing Defendant Wal-Mart Real Estate Business Trust is a real estate business trust organized under the laws of the State of Delaware. The only Trustee and the only Beneficial Owner of Wal-Mart Real Estate Business Trust is Wal-Mart Property Co. Wal-Mart Property Co. is a corporation organized under the laws of the State of Delaware with a principal place of business in the State of Arkansas. Therefore, for the purposes of diversity jurisdiction,

Defendant Wal-Mart Real Estate Business Trust is a citizen of the States of Delaware and Arkansas.

10. Removing Defendant Wal-Mart Stores East, LP is a limited partnership organized under the laws of the State of Delaware. The only partners of Wal-Mart Stores East, LP are general partner WSE Management, LLC and limited partner WSE Investment, LLC, both of which are limited liability companies organized under the laws of the State of Delaware. The sole member of both WSE Management, LLC and WSE Investment, LLC is Wal-Mart Stores East, LLC, a limited liability company organized under the laws of the State of Arkansas. The sole member of Wal-Mart Stores East, LLC is Walmart Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business in the State of Arkansas. The principal place of business for all of the foregoing entities (Wal-Mart Stores East, LP; WSE Management, LLC; WSE Investment, LLC; Wal-Mart Stores East, LLC; and Wal-Mart Stores, Inc.) is in the State of Arkansas. Accordingly, for the purposes of diversity jurisdiction, Defendant Wal-Mart Stores East, LP is a citizen of the States of Delaware and Arkansas.

11. Removing Defendant Wal-Mart Realty Company is a corporation organized under the laws of the State of Arkansas, with a principal place of business in the State of Arkansas and, therefore, for the purposes of diversity jurisdiction, is a citizen of the State of Arkansas.

12. This Court has original subject matter jurisdiction over the Action pursuant to 28 U.S.C. §§1332(a) and 1441(b), because (a) there is complete diversity of citizenship among the parties; (b) the amount in controversy exceeds the sum of seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs; and (c) none of the parties in interest who are properly joined and served as Defendantss are citizens of New York State. The Action may, therefore, be removed pursuant to 28 U.S.C. § 1441(b).

13. This Notice of Removal is timely under 28 U.S.C. § 1446(b)(3) and (c), because it is filed within thirty (30) days after receipt by the Removing Defendants of Plaintiff's Demand for Relief (the other paper from which it was first ascertainable that the case is removable), and within one (1) year of commencement of the Action.

14. Pursuant to 28 U.S.C. §1446(b)(2), all Defendants who have been properly joined and served, join in and consent to the removal of the Action.

15. Pursuant to 28 U.S.C. §1441(a), removal venue exists in the United States District Court for the Western District of New York because the Supreme Court, Erie County (the Court in which the Action was originally filed) is within the jurisdiction of the Western District of New York.

16. Pursuant to 28 U.S.C. §1446(a), all process, pleadings, and orders served to date upon the Removing Defendants are appended hereto. Pursuant to Local Rule 81(a)(3), an index of all documents filed in the state court action is attached hereto as **Exhibit D**.

17. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal is being served upon the Plaintiff and is being filed with the Clerk of the Supreme Court, Erie County. *See* Notice of Filing of Notice of Removal, with Affidavit of Service, attached hereto as **Exhibit E**.

18. The Removing Defendants reserves the right to amend or supplement this Notice of Removal.

WHEREFORE, the Removing Defendants requests that the case styled *John Busalachi v. Walmart Inc., Walmart Inc. f/k/a Wal-Mart Stores, Inc., Wal-Mart Associates, Inc., Wal-Mart Stores East, LP, Wal-Mart Real Estate Business Trust, Wal-Mart Stores East, Inc., and Wal-Mart Realty Company*, Supreme Court of the State of New York, County of Erie, Index №.

802158/2021, be removed to this Court, and that this Court take subject matter jurisdiction over this Action.

DATED: Buffalo, New York  
February 22, 2022

Yours, etc.,

*/s/ Pauline C. Will*

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BENNETT SCHECHTER ARCURI & WILL

By: Pauline C. Will

*Attorneys for Defendants*

701 Seneca Street, Suite 609

Buffalo, NY, 14210

Phone: (716) 242-8100

To: Joseph C. Todoro, Esq.  
Spadafora & Verrastro, LLP  
*Attorneys for Plaintiff*  
2 Symphony Circle  
Buffalo, New York 14201  
Phone: (716) 854-1111